C.F. 100/-4

(1)

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

Single Bench

Second Appeal No. 173 Of 2006

Appellant
Plaintiff

Narsingh, aged about 20 years, Son of Shri Bhuneshwar, Resident of Village Odkatoli (Chhatabar), Post Raikera, Tahsil Bagicha, District Jashpur (C.G.).

R.R. No. 4982/06 Presented by Shri S.D. Sahu dated 9/8/06

Versus

Respondents
Defendants

1. Bhuneshwar, aged about 36 years Son of Shri Dashrath, Caste Mahakul Resident of Village Chhatabar, Post Raikera, Tahsil Bagicha, District Jashpur (C.G.).

RE-TYPED-COPY 21.2.06 CLERK to A. G. BILASPUR

2. The State of Chhattisgarh, Through: The Collector, District Jashpur (C.G.).

SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE, 1908

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

SA.No. 173/2006

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

24.07.2006

Shri P.P. Sahu, counsel for the appellant.

Arguments heard on admission.

Order dictated as follows:

Oral Order

This is the plaintiff's second appeal, who lost in both the Courts. This arises out of judgment and decree dated 20.12.2005 passed in Civil Appeal No. 21-A/2005 by the District Judge, Jashpur arising out of Judgment and decree dated 11.3.2005 passed in Civil Suit No. 24-A/2001 by the Civil Judge, Class-II, Jashpurnagar.

The brief facts are that the plaintiff filed a suit for specific performance of an oral agreement which is said to have entered between defendant No.1 and his mother Smt. Ushawati sometime in the month of May, 1998. The plaint allegations are that Ushawati and defendant No.1 had performed a *Gandharwa* Marriage in the year 1983 and on some dispute, there was an oral agreement between them that defendant No.1 will execute a registered sale-deed in favour of the plaintiff in relation to some specified land, mentioned in the relevant column of the plaint and the plaintiff shall become owner thereof. The cause of action arose when the defendant did not execute such sale-deed as per the oral agreed between mother of the plaintiff and defendant No.1.

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

S.A. No. 173/2006

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश –2–	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The learned trial Court, after recording evidence, found that the plaintiff could not establish that there was any such agreement prevailing between the parties and the suit was dismissed.

The Appellate Court also took similar views and dismissed the appeal filed by the plaintiff and confirmed the judgment and decree passed by the trial Court. It is against this judgment and decree passed by the lower appellate Court, the plaintiff has filed this second appeal.

Admittedly, the factum of existence of an oral agreement and its performance being sought by the plaintiff in the suit was a question of fact and the two courts have determined that there was no such oral agreement prevailing between the parties.

Since there is concurrent finding by the two Courts below that no such oral agreement was prevailing between the parties, in absence of any perversity, I do not find reason to interfere in said findings in Second Appeal.

In the opinion of this Court, no substantial question of law is involved in this appeal warranting interference by this Court under Section 100 of the C.P.C. The appeal is dismissed at the motion stage.

Sd/-
Sunil Kumar Sinha
Judge

vatti

P.T.O.